SUPREME COURT U.S.
FILED
JAN 12 1881
JAMES H. MCKENNEY, CLERK

Supreme Court of the United States.

No. 207.

IN EQUITY.

T. B. CODDINGTON, APPELLANT,

versus

PENSACOLA AND GEORGIA RAILROAD COMPANY AND THE TRUTEES INTERNAL IMPROVEMENT FUND, RESPONDENTS.

BRIEF

~~Of D. P. HOLLAND~~ D. P. Holland, of Counsel for Appellant.

JOHN POLHEMUS, Printer, 102 Nassau Street, N. Y.

SUPREME COURT OF THE UNITED STATES.

IN EQUITY—No. 207.

THOMAS B. CODDINGTON, APPELLANT,

vs.

THE PENSACOLA AND GEORGIA RAILROAD COMPANY, AND THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA, RESPONDENTS.

Brief for Appellant, D. P. Holland of Counsel.

Statement of Case for Appellant.

This is an appeal from a decree made by the United States Circuit Court, at Jacksonville, Florida, February 9th, 1878, sustaining the general demurrers filed by defendants and dismissing the bill of complaint.

The suit was brought to rescind a contract by which the defendant railroad company by false representations obtained from Coddington certain coupons in 1866, 1867 and 1868 giving him therefor certain certificates of preferred stock bearing interest, which certificates, the bill charges, were void because the railroad company had no legal authority or power to issue such certificates as those they gave to Coddington.

2. That when this fraud was perpetrated on Coddington the trustees of the internal improvement fund had notice thereof, by reason of the fact that at this time one of the directors of the railroad company and another officer of the company were also members of the board of trustees of the internal improvement fund.

3. That the reason why this suit was not commenced earlier the bill shows, was that the president moved away and then died. That the secretary died. That Coddington could not find a board of directors since 1869 (folio 19), and could find no person to give him any relief, there being no new officers elected, nor a board of directors, since 1869.

4. That the coupons obtained from appellant were never sold, and are now either in the railroad companys hands or in those of the trustees, but if in the hands of the trustees, the bill charges

that the trustees never paid anything whatever for them (folio 19, Sec. XIX).

5. That there never has been any money paid on the certificates given appellant; that their issue was void because *ultra vires;* and asks that the coupons be surrendered back to him on his giving up the certificates.

6. It is charged that neither the company nor the trustees ever gave any consideration whatever for the coupons, and that if the trustees have them, the trustees gave the railroad company nothing for them.

The appellant contends:

1. That this transaction should be set aside and the parties restored to the position they occupied before the coupons were obtained from Coddington.

2. That this can be done because the coupons were not sold or pledged by the railroad company, and that they are now in the hands of the company or in that of the trustees, but that the trustees *never gave anything whatever for them*, and if they hold them, hold them, because they were handed to them for cancellation by the railroad company.

3. That we are not barred by the statute of limitations, because the president and secretary both died, and there has been no officers elected to take their places. Nor has there been a board of directors since 1869. what better reason could be given for the suit not being brought earlier. We say this takes the case out of the statute of limitations.

4. Thomas B. Coddington, the appellent in this suit, a citizen of the State of New York, has been for many years, a merchant in the city and State of New York. Previous to 1866, Coddington had sold railroad iron to the Pensacola and Georgia Railroad Company, one of the defendants to this suit (hereinafter for brevity alluded to as the defendant company), to construct its railroad; the defendant company paid him for his iron 252 bonds and the coupons attached. One of the bonds is set forth as Exhibit No. 5. Coddington was the good friend of the company, giving it credit and advancing its interests, and as such recognized in New York and Europe by those who had dealings with the defendant company.

These bonds and coupons were issued by virtue of an act of the State of Florida, entitled "An Act to provide for and encourage "a liberal system of Internal Improvements in this State," approved January 6th, 1855; to which said act reference is prayed to be had, and which is made a part of this bill.

The other defendants to this suit are the executive officers of the State of Florida, who are *ex-officio* the trustees appointed and created by that act of Florida, and who for brevity are hereinafter called the trusees.

In the year 1866, Edward Houstoun, the president of the defendant company, came to New York to get Coddington to aid him in saving the road from being sold by the trustees for non-payment of interest, which, if not paid by the said company to

the said trustees, they, the said trustees, in default of the payment of the interest by the company, and the sum of one per cent. per annum as a sinking fund, were, after the expiration of thirty days from said default, or refusal of the company, required by the statute to take possession of the road and all the property of the company, and sell the same, as prescribed by the third section of said act.

Coddington then—to wit, in 1866—was the owner of and held 1,165 past-due coupons of the said first mortgage bonds issued under this act, the value of the then said past-due coupons being $40,775.

The president of the defendant company induced Coddington to give up these coupons and to go to Europe and prevail upon his (Coddington's) friends to give up to the defendant company the past-due coupons held by them, and to receive in exchange and lieu of these past-due coupons, shares of preferred stock in the defendant company, bearing interest; alleging that this was the only way to save the defendant company from bankruptcy.

Coddington says in his bill: "Your orator being thus prevailed upon by said president of said company, he, the said Houstoun, as president, repeatedly declared to your orator that the said exchange of said coupons for the preferred stock was the only way to save the railroad company from bankruptcy, and that the preferred stock which the said company would give your orator for the said past-due coupons would be valuable, and that the company would guarantee the interest thereon, and that the trustees of the internal improvement fund had no money to pay said coupons. Your orator, fully and solely relying on the representations aforesaid, made for and on behalf of said company by the said President Houston, *did finally consent and did deliver up* to the said company all the past-due coupons then owned by your orator; and further, and at the earnest solicitation and request of the said president, your orator went to Europe and urged his business friends to surrender to the company their past-due coupons and receive therefor shares of preferred stock in said company; that several of the said Europeans, at your orator's urgent request, did agree thereto, and gave your orator their past-due coupons, which said past-due coupons your orator delivered up to the said company, and received therefor certificates of pretended shares of preferred stock in his own name, and other like certificates in the names of the owners of the other coupons which your orator had delivered up to the company.

That subsequently many of the Europeans and others, whom your orator had induced to part with their coupons for said shares of pretended preferred stock, became so dissatisfied that your orator bought from them their first mortgage bonds, and the preferred stock which he had received for their coupons as aforesaid, the said coupons having been cut from the aforesaid bonds and given for the said preferred stock which your orator had received for said owners of said coupons from the said company. And that your orator had thus, during the years 1866, 1867, 1868, and

prior to March, A.D. 1869, become possessed of the certificates of pretended shares of preferred stock in the said company in his own name, and in the name of the other holders of coupons, as in Exhibit No 1 set forth, and hereto attached and prayed to be taken as part of this bill."

Coddington delivered to the defendant company in May, 1866, and April and July, 1867, 1,165 past-due coupons of the face value of $40,775, for shares of what purported to be on their face preferred stock or interest-bearing stock. The certificates are made exhibits to the bill; they are all of like form, and one is as follows:

No. 38. 200 SHARES.

PENSACOLA AND GEORGIA RAILROAD COMPANY.

Shares $100 each. Shares $100 each.

This is to certify that T. B. Coddington is entitled to two hundred shares, of one hundred dollars each, preferred capital stock of the Pensacola and Georgia Railroad Company, upon which is guaranteed the payment of 7 per centum interest per annum, payable semi-annually on the 1st of July and January, interest commencing on 1st of January, 1867, transferable only on the books of this company in person or by attorney, on the surrender of this certificate.

Internal Revenue Stamp. 25c. Cancelled.

Witness the signatures of the President and Secretary at their office in Tallahassee, Fla., this 19th day of May, 1866.

E. HOUSTOUN,
President.

F. H. FLAGG,
Secretary.

They were delivered or bear date from May, 1866, to October 22d, 1868. Their description, dates, and amounts are as follows:

Date.	*No.*	*No. of Shares.*	*To whom issued.*	*Amount.*
1866.				
May 19,	38	200	T. B. Coddington,	$20,000 00
May 19,	39	200	do	20,000 00
1867.				
April 30,	120	$180\frac{85}{100}$	do	18,085 00
July 6,	142	5	do	500 00
1868.				
Oct. 22,	207	$15\frac{26}{100}$	do	1,526.00
				$60,111 00

and for which the defendant company received from Coddington $40,775 past-due coupons.

Coddington in his bill says:

"That your orator also delivered up to the said company during the months of May and October, 1866, and April, 1867, *like past-due coupons, belonging* to his friends in Europe and America, to the face value of the coupons of ($23,310) twenty-three thousand three hundred and ten dollars, and received in exchange therefor pretended certificates of shares of preferred stock in said company, said certificates being made in the name of the true owner of the said coupons, which your orator had received from said owner and turned over to the said company, a copy of one of the certificates being filed herewith, marked Exhibit No. 3, and prayed to be taken as part of the bill."

These coupons were delivered during the years 1866, 1867, 1868, and prior to March, 1869, amounting in the aggregate to the face value of $64,085. Of this amount $40,775 was owned by Coddington, and $23,310 by his friends.

Coddington received shares of preferred stock in the names of these parties to the amount of $23,765, dated from March 5th, 1866, to February 14th, 1868, and in Exhibit 4 gives a detailed list of the said shares of stock, these shares being in the same form as those issued to him. Exhibit 3 is a copy of one of these certificates.

The owners of these $23,310 coupons afterwards became so dissatisfied that Coddington bought them of those whom he had, as the representative of the president of the defendant company, induced to give up the coupons for exchange, and thus Coddington now holds the whole number of shares that were given by the company as aforesaid; and he claims to be subrogated in equity, as such holder, to all the rights of the original owners of the $23,310 coupons given up by him to the defendant company.

The bill gives a copy of the coupons, and a detailed list of all the coupons delivered by Coddington to the defendant company, for which the company delivered to Coddington for himself and others, the certificates of preferred stock in the bill described.

(2.) The bill charges that the said Pensacola and Georgia Railroad Company had no lawful or legal right whatever to issue any shares whatever of preferred stock, or authority by the charter of the company to issue said preferred stock, and that the issuance of said shares of preferred stock was in violation of the charter of the company and of the laws of the State of Florida, and a gross fraud in law and in fact upon your orator, and done for the purpose of deceiving and defrauding your orator out of his just rights and property.

That your orator was a merchant, and had full faith and confidence in the representations of the said President Houstoun, for and on behalf of the said company, as to the right and power and authority to issue said preferred stock; and relying thereon, and solely relying thereon, your orator gave up his said coupons, and obtained the coupons of his friends aforesaid, and gave them up for said pretended shares of preferred stock, not supposing of the contemplated fraud.

(3.) *The bill charges that the coupons have not been paid by the*

defendant company, nor by the trustees, and that they are still a lien upon the fund to the same extent as if Coddington had never given them to the company.

That Coddington presumes the coupons are in the hands of either the company or the trustees; but that if received by the trustees, they were not bought by the said trustees, because the trustees have no power to buy, trade, or barter for said coupons, and that if any transfer to the trustees has been made, the same is void.

That if the coupons are destroyed, or attempted to be canceled, that he has the right to have them re-established.

(4.) That shortly after this transaction the president of the company removed from the State of Florida, and subsequently died. That Mr. Flagg, the secretary of the company, also died. That there has been no president or secretary elected since 1869. That he has failed to get any relief, and has not been able to find any Board of Directors since 1869.

(5.) That subsequently—to wit, in March, 1869—the trustees of the internal improvement fund, by virtue of said Act of January 6th, 1855, took possession of the Pensacola and Georgia Railroad Company, *and advertised the same for sale to the highest bidder for cash, and sold the said Pensacola and Georgia Railroad Company, and all its property of every kind, for part cash and part credit*, for the sum of one million two hundred and twenty thousand dollars, and delivered the said road and all its property to the bidders and their assigns without any authority of law therefor. Your orator alleges and charges that the said sale was void, and a fraud upon your orator, because that the said trustees had no legal authority, after advertising the sale of the road for *cash*, to change the terms of the sale to credit.

(6.) That the said defendant company has never paid one cent of interest, or anything whatever, on said pretended shares of preferred stock, nor upon said pretended certificates.

(7.) The bill states that Robert H. Gamble is and was one of directors of the defendant company from the year 1866 up to this time; and that Gamble was also a member of the Board of Trustees during the year 1868, and until and about 1873, Gamble being the Comptroller of the State during these years; and that Walter Gwynne, one of the present trustees, was an officer of the defendant company during the years 1866, 1867, 1868, and part of 1869.

And that by reason of these gentlemen being officers of the company, and also members of the Board of Trustees, the trustees had notice of the exchange of the said coupons for said pretended shares of stock.

(8.) Coddington, in his bill, offers and tenders to deliver up and back to the company the said certificates of pretended preferred stock received by him for the said coupons from the Pensacola and Georgia Railroad Company, and to surrender back the

same, and alleges that he has been anxious and desirous to do so for many years, but that he could not find any one who was authorized, or who would receive the same, and give him back the said coupons.

PRAYERS.

The bill prays:

1.—Requiring the Georgia and Pensacola Railroad Company to deliver back and surrender to your orator the said coupons of the first mortgage bonds of the Pensacola and Georgia Railroad Company, which said company received from your orator, upon your orator's surrendering back to the said company, or delivering into this Court, the certificates of pretended shares of preferred stock of said company received by your orator for the said coupons.

2.—That in case the said coupons are in the hands of the said trustees or their agents, they, the said trustees, may also be ordered and directed to turn over and surrender the said coupons to your orator.

3.—That in case it shall appear that the said coupons have been canceled, lost, or destroyed by the said company or the said trustees, or by their authority, that an order may be made re-establishing the said coupons, and that the coupons which, by order of the Court, shall be re established, shall have the full force and effect as the originals had, that were canceled, lost, or destroyed, and that the substituted or re-established coupons be delivered by the said company of the said trustees to your orator, in lieu of, and with the full force, virtue, and validity as the original coupons received from your orator by said company.

4.—A prayer for general relief.

The trustees filed a demurrer to this bill on the 4th May, 1877. And the defendant railroad company filed a demurrer on the 4th June, 1877.

Both the defendants having demurred, to wit:

"That the plaintiff hath not, in and by his said bill, made or "stated such cause as entitles him in a court of equity to any "discovery from this defendant or any relief against it, as to the "matters contained in said bill or any of such matters."

The Court below sustained the demurrer and dismissed the complainants' bill.

I.

It is contended on behalf of the appellant, that he is entitled to have this transaction rescinded and the coupons delivered back to him by the defendant company, upon the plaintiff surrendering the shares of pretended preferred stock, because the defendant

company was not authorized by any law of Florida to issue such shares of stock; and that the issue of stock, or stock certificates bearing interest (such as those issued by the defendant company to Coddington), is against public policy, and void.

Coddington was a merchant, and the owner of $40,775 coupons of the first mortgage bonds of the defendant company, issued in accordance with the Internal Improvement Act. Houstoun, the president of the company, comes to New York and induces Coddington, by the false representations described in the bill, to give up to the company his coupons, and to induce his friends to give up their coupons to the company, and take shares of preferred stock, or stock certificates bearing interest at the rate of seven per cent., payable semi-annually, therefor. Coddington, *believing the representations, and relying solely upon what the company by their president tells him*, during the years 1866, 1867, and 1868, delivers to the company his own coupons, amounting to $40,775, and coupons that he obtained from his friends, amounting to $23,310, making in all coupons amounting to $64,085; and for these coupons the defendant company gives Coddington stock certificates bearing interest.

The persons who owned these $23,310 of coupons, and in whose names $237\frac{65}{100}$ shares, or stock certificates, bearing interest, had been given for them to Mr. Coddington, afterwards becoming dissatisfied, Mr. Coddington bought the shares of those he had induced to make the exchange; and thus Coddington now holds all these shares of pretended preferred stock.

1.—It is clear that it was the duty of the defendant company to know whether they were authorized by law to issue these shares of stock bearing interest, or not. And if they were not, we hold that no matter whether the defendant company wilfully issued them, knowing that they had no such power, or believing that they had such right, mistook their powers and authority, that a court of equity will rescind the transaction, and require the surrender back to Coddington of the coupons received from him for such illegal issue of stock certificates bearing interest.

Justice Story said: "Nothing is clearer in equity than the "doctrine that a bargain founded upon false representations made "by the seller, although made by innocent mistake, will be "avoided. Mistake as well as fraud in any representation of a "fact material to the contract is a sufficient ground to set it aside."

1 Story, 172.
Hough *v.* Richardson, 3 Story, 691.
Doggett *v.* Emerson, 3 Story, 733.

"If a duty is cast upon a man to know the truth, and he makes "a representation in such a way as to induce a reasonable man to "believe that it is true and is meant to be acted on, he cannot be "heard to say, if the representation proves to be untrue, that he "believed it to be true, and made the mis-statement through "mistake or ignorance or forgetfulness."

Kerr on Fraud and Mistake, p. 69, citing many cases. See note 1.

"A man who has made false representations, by which he has "induced another to enter into a transaction, cannot turn round "on the person whom he has defrauded and say that he ought to "be more prudent, and ought not to have concluded the repre- "sentations to be true in the sense which the language used in "the prospectus naturally and fairly imports."

New Brunswick, etc., Railway Co. *v.* Muggeridge, 1 Dr. & Sm., 382

"However negligent the party may have been to whom the in- "correct statement has been made, yet that is a matter affording "no ground of defense to the other. No man can complain that "another has relied too implicitly on the truth of what he him- "self stated."

Kerr on Fraud, pp. 80, 81.

2.—*It is clear that the essence of this transaction was that Coddington should receive for the coupons, shares of stock bearing interest, and that the company had the lawful authority, and were legally empowered to issue them.*

"In cases of mutual mistake going to the essence of the con- "tract, it is by no means necessary that there should be any pre- "sumption of fraud. On the contrary, equity will often relieve, "however innocent the parties may be."

§ 142, 1 Story Equity Jurisprudence.

A court of equity grants relief upon the ground that both parties intended the purchase and sale of *a subsisting thing, and implied its existence* as the basis of the contract.

1 Story E. J., § 142.

The civil law laid down the doctrine: "If there be a misrepre- "sentation of the substance of the thing, there is no contract."

See Kerr on Fraud, p. 58.

3.—Coddington cannot be presumed to have known what were the legal powers of this Florida corporation, he being a resident and citizen of New York. The laws of that State were foreign laws to him, whatever they might be as to the citizens of Florida. Mr. Story, in 1 Story E. J., page 162, § 140, says: "Ignorance "of foreign law is deemed to be ignorance of fact, because no "person is presumed to know the foreign law, and it must be "proved as a fact."

See cases cited in Note 3. 1 Story E. J., § 140.

This transaction comes up fully to those unconscionable bargains, naturally to lead to the presumption of fraud, imposition or undue influence. Speaking of this class of cases that a court of equity will give relief in, Mr. Justice Story says: "This is "the sort of fraud to which Lord Hardwicke alluded in the pas- "sage already cited, when he said that they were such bargains "as no man in his senses, and not under delusion, would make on

"the one hand, and as no honest, fair man would accept on the "other, being inequitable and unconscientious bargains."

1 Story Equity J., § 244.

4.—It is clear that the defendant company represented, and that Coddington acted upon the representation, that the shares he was to receive for his coupons were valid in law, and that if he supposed for one moment that the company were not authorized to issue these shares of stock bearing interest, that he never would have parted with his coupons.

There was no consideration given to Coddington for these coupons. He received nothing for his property. The company gave him what in form was a truth, but in law and in fact a lie, in the form of stock certificates bearing interest. What greater false representation could there be than the certificates themselves? *The demurrers admit the false representations of the president.* Now, if Coddington had given money for these shares, we think the law is clear that he would have been entitled to recover his money back, and have himself relieved as a shareholder.

"If a man has been induced by false representations in the "prospectus of a company to take shares from the company, he "is entitled to recover his money and to have his name removed "from the register."

Blake's case, 34 Beav., 636; Ross *v.* Kerr on Fraud, 351.

And this doctrine has been carried so far, that if he has parted with some of the shares before he discovers the fraud, he will be relieved as to the remainder.

Maturin *v.* Fredennick, 12 W. R., 740.

5.—It will be found that all the authorities admit that, although the representations were honestly made and without any intention to misrepresent, *yet if the subject-matter be so different in substance from what it was represented to be, as to amount to a failure of consideration*, it is such a misrepresentation as to become a fraud in law which will be rescinded in equity.

Kerr on Fraud, pp. 61 to 65, and cases cited in the notes.

"Nor is the ability of a man to rescind a transaction, as a "whole, fatal to his right of rescission, if his inability to do so "is attributable to the party against whom he seeks relief. If "the latter has entangled and complicated the subject of the "transaction in such a manner as to render it impossible that he "should be restored, the party defrauded may, on doing what "ever it is in his power to do, have the transaction rescinded."

Mason *v.* Bovet, 1 Denio, 69.
Kerr on Mistake and Fraud, p. 337.

"It is enough, in order to entitle him to have a transaction set "aside, to show a fraudulent misrepresentation as to any part of

"that which induced him to enter into the contract which he "seeks to rescind."

Kerr on Fraud and Mistake, p. 334.

"On setting aside a transaction, the Court proceeds on the "ground that, as the transaction never ought to have taken "place, the rights of the parties are, as far as possible, to be "placed in the same situation in which they would have stood if "there had never been any such transaction."

Kerr on Fraud and Mistake, pp. 335, 336.

"The fact that the parties cannot be put precisely in '*statu* "*quo*' as to the subject-matter of the contract, will not preclude "a decree for the rescission of the contract. If it would, an exe- "cuted contract never could be rescinded by a decree of a Court, "for the parties never could be thus placed."

Gattling *v.* Newell, 6 Ind., 572.

II.

I now propose to show that the defendant company could not issue preferred stock, or stock certificates bearing interest, without express legislative authority; and I deny that any such authority can be found in the charter of the company.

1.—A corporation has no power except what is given by its incorporation act, either expressly or incidental to its existence and express powers.

4 Peters, 152.
9 Howard, 172.
2 Cranch, 127.
4 Wheaton, 518, 636.

Issue of stock is governed by the local law.

3 Howard, 483, 511.

2.—The authority to issue such preferred or interest-bearing stock must be given in the charter.

"Very frequently a company issues shares having a dividend "payable in priority to that upon ordinary shares. *To do this* "*the power must have been given in the constating instruments.*"

Green (Brice's) Ultra Vires, p. 145.
4 Drewry's Ch. R., 529.
2 Drewry's & Smales, 529.
See note, p. 147
In the Pittsburg and Connellsville Railroad Company *v.* County of Alleghany, 63 Penn. State Reports, at pp. 135 and 136.

Thompson, *C. J.*, delivering the opinion of the Court, said:

"Artificial bodies are not, like natural, free to do as they please. "If they were, they would soon pass beyond the control of the "creating power. Contracts, engagements, and acts of corpora-

"tion, not necessarily embraced within the scope of the under-
'taking authorized by the act of incorporation, cannot be legally
'done or performed by the corporation. It has no power or
'authority but that which is expressly given it, or which neces-
'sarily flows from those given.

"An obvious reason why, without express authority, a contract "like that we are considering could not be legally entered into by "the railroad company, is, that to pay interest anterior to earn-"ings by the company would require a diversion of its capital "from its legitimate to a different purpose from that for which it "was ostensibly obtained, and which was the inducement for the "subscriber to stock to pay it in.

"It is not necessary, however, to multiply words to prove what "is most apparent—that a semi-annual payment of interest out of "capital of a company before any earnings are made, is the same "injury as if paid as dividends: one is as much within the pro-"hibition as the other, both being within the same mischief.

"Without express authority, or beyond the limits of authority "conferred, we think the company had no power to bind its "stockholders to constitute the company to pay interest to the "County of Alleghany for a period of thirty years, or any other "period."

Special reference is asked to this case, as we hold it clearly decides that a company cannot, without express legislative authority, bind itself to pay interest on stock.

An agreement to pay interest on stock is a guaranty of dividends and puts the stock in the position of preferred stock.

Stevens *v.* South Devon Railroad, 12 Eng. L. and Eq., 229.

Such agreement is against public policy.

See Troy and Boston Railroad *v.* Tibbetts, 18 Barb., 307.

It tends to defeat the purposes of the charter.

Mining Co. *v.* Levy, 4 P. & F. Smith, 227; 7 American Law Register, 577.

It is a fraud on other shareholders and creditors.

Miller *v.* Pitts. and Conn. Railroad, 4 Wright, 239.

The stock of a corporation is the means provided for carrying out the object of the incorporation.

Miller *v.* The Illinois C. R. R. Co., 24 Barb., 312, 329.

In the case of St. John *v.* Erie Railway Co., 22 Wallace, page 137, at page 138 is given the section of the charter which authorized preferred stock to be issued by the company.

This case shows that the preferred stock was predicated on special authority given by the Legislature of New York.

Redfield, 4 ed., page 518 (4), says: "It seems questionable how "far railway corporations, without special authority of the Leg-"islature, have power to issue stock certificates bearing interest.

"That seems like an attempt to convert a certificate of stock into "a security for a loan, either permanently or temporarily."

In the case of Bailey *v.* Railroad Company, 17 Wallace, 104, Mr. Justice Clifford said: "Certificates of preferred stock were "issued in that form until the legislature passed the act author- "izing the company to convert their bonds, secured by mortgage, "into preferred stock, when the certificates issued in that form "were recalled and a new form adopted."

We contend that in the case in which questions arose as to preferred stock—it will be seen as in the two cases, in 17 and 22 Wallace—there was special legislative authority for the issue of such interest-bearing stock certificates.

III.

The defendant company was incorporated by special act, 8th January, 1853.

See acts of 1852 and 1853, page 43.

Commissioners were appointed to open books of subscription. The capital stock was fixed at one million five hundred thousand dollars, with power to increase to three million five hundred thousand dollars. Payment of stock was authorized to be made in materials, provisions and all and everything necessary for *the construction of the road.*

In 1855 the Internal Improvement Act was passed, and the defendant company accepted the act, and, after this acceptance, the Internal Improvement Act became a *part of the charter* of the defendant company.

Florida, Atlantic and Gulf Central Railroad Co. *v.* The Pensacola and Georgia Railroad Co., 10 Florida.

The Courts of Florida have uniformly held that this statute is *a part of the charter of the defendant company.* Under this act the coupon bonds were issued.

By this act the trustees guaranteed *the interest* on the bonds of the company, and the company were to pay the interest falling due to the trustees The 14th section provides that the trustees shall receive for all payments made for interest "equal amounts "of the capital stock of said company, which stock shall entitle "the internal improvement fund to all the privileges and advan- "tages of private stockholders"

The 27th section provided that the fund shall pay the interest in default of interest being paid by the company.

And by the 3d section, in case of the non-payment of interest on the bonds issued by the company, and the sum of one per cent. per annum as a sinking fund, the trustees were authorized to take possession of the road, and "advertise the same for sale "at public auction to the highest bidder, either for cash or addi- "tional approved security, as they may think most advantageous "for the interest of the internal improvement fund and the "bondholders."

1.—It is clear that whatever rights these trustees possess come from the statutory authority; if they paid any money for interest past due on the bonds, they became stockholders to that amount. If the company failed to pay the interest, they were required to pay it out of the fund; and last, if the company failed to pay, after thirty days' refusal or default, they were to take possession of the railroad, and all its property of every kind, and "*advertise*" the same for sale at public auction to the highest bidder, either for cash or additional approved security—as they may think most advantageous, etc.

The bill charges that the trustees did advertise the property for *cash*, but afterwards *sold* it for *part cash and part credit.*

Yet, the defendants say we have not made a case that gives us any equity, or right to discovery.

The trustees are public officers; the statute tells them what they shall do—that they shall "advertise," etc. They obey the first part of the law: they advertise sale to be made for *cash*, and *then sell* for part cash and part credit. And this, we are told, is no fraud. The statement of the facts set forth in the bill, and the third section of the act, show that here is ground for equitable relief—whether Coddington is holder of coupons, or a stockholder.

2.—But the trustees deny we have any equity; refuse to answer a bill that specially charges fraud. *We refer to the 32d Rule of Equity, adopted by the Supreme Court of the United States, to show that even by plea they could not answer this bill, where fraud is specially charged, without answering the part of the bill containing the charges.*

For whether Coddington is entitled to have his coupons returned or not, yet he has such an interest as would give him a right to make the trustees answer for an attempt to sell this railroad property illegally.

The litigation in the courts shows that the trustees have not even yet collected the *auction bid made at their sale of this property* in 1869, but that there is yet of that bid $472,000, and interest, unpaid; and the records of this Court show that fact. The trustees were the agents of the public, who owned this vast domain of millions of acres of the public lands. The law gave them no rights except those of the statute; if they paid money it was public money, and for it they were to receive stock for the public; and if they sold property, they were to sell it as the statute required, and not as they saw fit. The owners of the property and the creditors of the company had rights, and yet have them.

The company is the creature of law; its powers are to be found in its charter and this act of 1855, and in no place can the right to issue preferred stock be shown to have been given by the legislature.

III.

The bill shows that a director of this company, when this transaction took place, was one of the trustees who sold the road in 1869*; this director was one of the Board of Trustees, and we say that this fact shows the trustees had notice.*

Another member of the board of trustees was an officer of the railroad company.

So we see that when the transaction occurred, two of the board of trustees were officers, at the same time, of the railroad company, and one of them a director. Hence we say the trustees had notice of the fraud practised on Coddington. The trustees knew how the company got Coddington's coupons, because two of their own board were officers of the company that got them.

Again, the trustees paid nothing for the coupons to the company; if the trustees have them, they cost the trustees nothing. This is not a case where the coupons have been sold to a third person. For all we know, the railroad company may still have the coupons; but, even if the trustees have them, they paid nothing for them, but simply received them for concellation from the company.

IV.

The bill also shows why it is that Coddington has not sued sooner, because both the president and the secretary are dead, and he could not find a board of directors since 1869, *or any one authorized, or who would give him relief. Shall he be deprived of his property, and the company keep it by fraud, and there be no relief, because the company have not elected a president or secretary, and no board of directors have assembled since* 1869*?*

Lord Cottenham, in Trevelyan *v.* Charter, 4 L. J. Ch., N. S., 214, said. "Those who may be disposed fraudulently to ap- "propriate to themselves the property of others, may be assured "that no time will secure them in the enjoyment of their plun- "der, but that their children's children will be compelled by this "Court to restore it to those from whom it has been fraudulently "abstracted."

For these reasons we ask that the decree of the Court below be reversed.

Respectfully submitted

~~D. P. HOLLAND,~~

D. P. Holland

Of Counsel for Appellant.

JAN 20 1881

Supreme Court of the United States

OCTOBER TERM, A. D. 1880. IN EQUITY.

No. 207.

THOMAS B. CODDINGTON, Appellant,

vs.

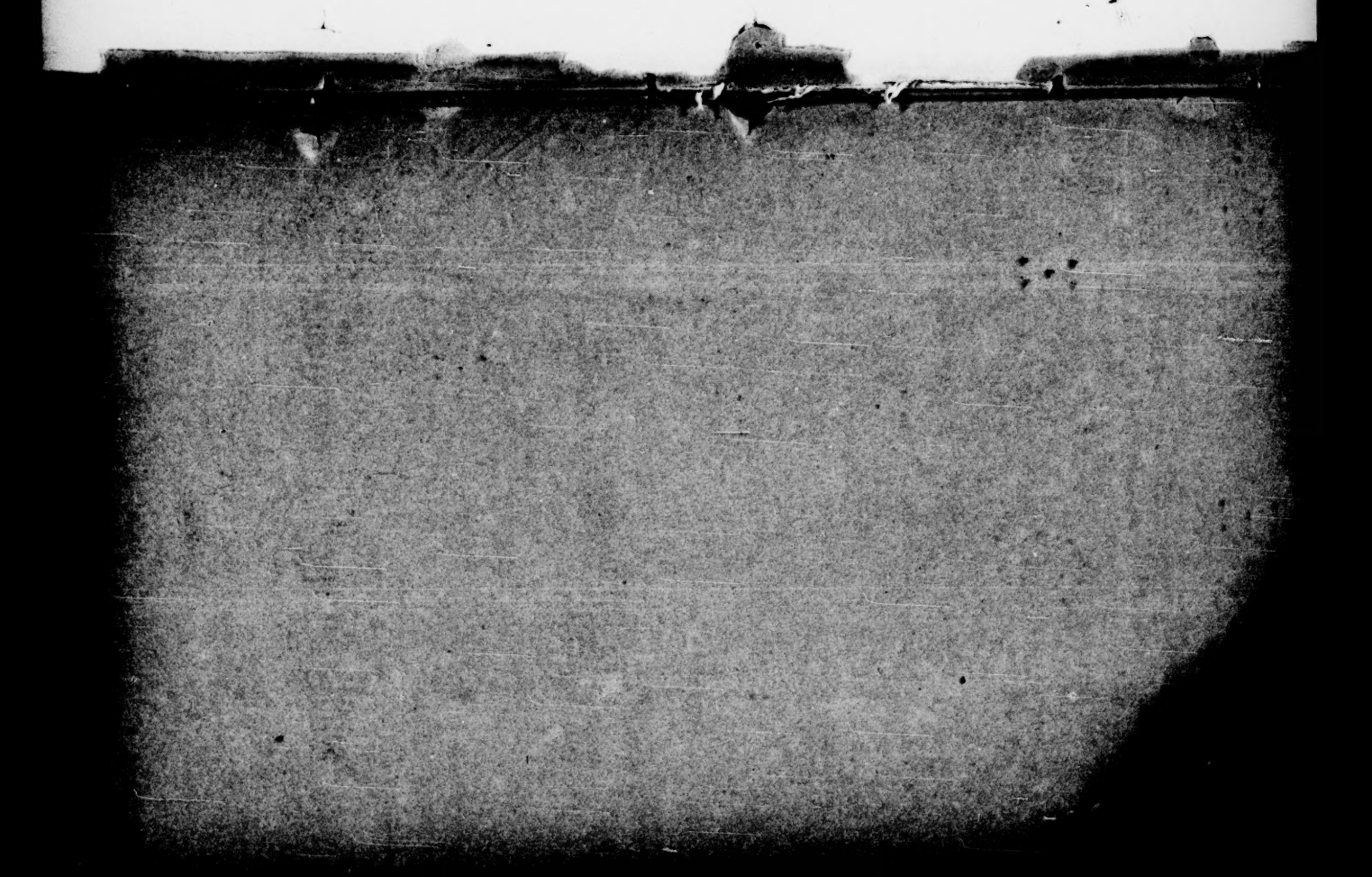
THE PENSACOLA AND GEORGIA RAILROAD COMPANY, THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND, et al.

APPEAL FROM UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF FLORIDA.

Brief in Behalf of the Trustees of the Internal Improvement Fund.

C. W. JONES, of Counsel.

THOMAS McGILL & CO., LAW PRINTERS, WASHINGTON, D. C.



Supreme Court of the United States.

OCTOBER TERM, A. D. 1880. In Equity.

No. 207.

THOMAS B. CODDINGTON, APPELLANT,

vs.

THE PENSACOLA AND GEORGIA RAILROAD COMPANY, THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND, ET AL.

Appeal from U. S. Circuit Court, Northern District of Florida.

BRIEF IN BEHALF OF THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND.

I.

STATEMENT OF THE CASE.

The bill of complaint, filed March 15, 1877, alleges (pars. 1, 2) that the complainant, a citizen of New York, was, during the year 1866, the owner of a large number of first-mortgage bonds and the coupons thereof, issued—under the provisions of an act of the Legislature of Florida, (which act is prayed to be taken as a part of the bill,) entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, (commonly and hereinafter called "The Internal

Improvement Act")—by the Pensacola and Georgia Railroad Company, a defendant, a Florida corporation, and received by complainant in payment for railroad iron which he sold said company for the constructian of its road prior to 1866. He took 252 of these bonds, with their coupons, in payment as aforesaid, (for copy of bonds and coupons, which are prayed to be taken as parts of the bill, see pp. 17, 18, 4, and 6 of the printed record,) and was the recognized friend of the company in New York and European business circles; that (par. 3) the Florida State officers made defendants (Governor, Comptroller, Treasurer, Commissioner of Lands and Immigration, and Attorney-General) are the successors in office of the officers named in the second section of the said "Internal Improvement Act" and the trustees of the trusts of said act. The (par. 4) said company having become embarrassed by reason of the war, its then president, Edward Houstoun, came, in 1866, to complainant, in New York, to assist it in relieving it of its most pressing debts; and chiefly to provide payment of past-due interest on said bonds. The said trustees, on default by the company for thirty days in paying to them interest and the sum of one per cent. per annum sinking fund, were, under the requirements of the third section of said Internal Improvement Act, to take possession of the road and all the property of the company, and sell the same.

The said president (par. 5) entreated complainant, both to surrender to the company his past-due coupons in exchange for preferred stock of the company, and to use his influence with his (complainant's) friends in America and Europe, holding such coupons, to do likewise. Houstoun, as president, repeatedly declared to complainant that such exchange was the only way to save the company from bankruptcy; that such stock would be valuable, and the company would guarantee the interest thereon; and that the said trustees had no money to pay said coupons. Com-

plainant, fully and solely relying on such representations, made on behalf of said company, delivered to it all his past-due coupons, receiving therefor stock certificates; and further, at said president's earnest solicitation, went to Europe and urged his business friends there to do likewise, and several of them did so, he receiving from them their coupons and surrendering them to and receiving from the company stock certificates in their names. Subsequently, those whom complainant had induced to thus part with their coupons became so dissatisfied that complainant bought from them their first-mortgage bonds and their said stock.

Thus complainant, in 1866, 1867, 1868, and prior to March, A. D. 1869, became possessed of the aforesaid certificates of stock, he delivering up (par. 6) to said company, during May, 1866, and July, 1867, eleven hundred and sixty-five (1165) past-due coupons, amounting to $40,775, which he owned, for certificates of stock; and (par. 7) he delivering to said company, during May and October, 1866, and April, 1867, like past-due coupons of his friends to the amount of $23,310—the whole amount (par. 8) of coupons surrendered being $64,085. The coupons were, by their terms, payable to bearer, some in Savannah, Georgia, and some in New York.

Complainant having (par. 9) prior to March, 1869, and prior to the seizure of said road by the trustees, purchased in good faith and honor the said pretended shares of preferred stock from those he had induced to part with their coupons as aforesaid; thus he became and now is possessed in his own right of the shares, and entitled to be subrogated in equity to all the rights of the original owners of said coupons, and the persons in whose names the said pretended shares were issued.

The company (par. 12) had no lawful right or charter power to issue any shares of preferred stock; that the issuance was in violation of the charter of the company and of

the laws of Florida, and a gross fraud in law and in fact upon complainant, and done for the purpose of deceiving and defrauding him out of his just rights and property.

That (par. 13) complainant was a merchant and had full faith and confidence in the representations of said Houstoun for and on behalf of said company as to its right, power, and authority to issue said stock, and, solely relying thereon, gave up his own coupons and obtained his friends', and gave them up for said pretended shares of preferred stock, "not supposing of the contemplated fraud."

None of said certificates bear the corporate seal of said company, but are signed only by the president and secretary. Complainant is advised they are not the certificates of the company, not being under the seal of the company. These pretended certificates issued as aforesaid without lawful authority are the only thing received for said $64,085 of coupons.

Said coupons (par. 14) have never been paid by the company nor the Trustees of the Internal Improvement Fund; that the same are still due and unpaid, and a lien and charge upon the said fund under the Internal Improvement Act to the same extent as if they had never been surrendered.

In March, 1869, (par. 15) the Trustees of the Internal Improvement Fund, by virtue of said Internal Improvement Act, took possession of the said Pensacola and Georgia Railroad Company, and advertised the same for sale to the highest bidder for cash, and sold the said company and all its property of every kind, for part cash and part credit, for $1,220,000, without any authority of law therefor. The sale was void and a fraud upon complainant, because the trustees had no legal authority after advertising the sale of the road for cash to change the terms to credit. The said trustees (par. 16) thus defrauded complainant, as a creditor of the company, by selling the property of the company upon which property complainant, as a holder of said coupons of the company, had a lien by virtue of the statute.

That (par. 17) by said act of the trustees he has been unable to follow said property without setting aside said sale and title to said property.

That the president of said company shortly afterwards moved out of Florida and has since died; the secretary of the company turned over all the books and papers to some parties to your orator unknown, and that the said secretary, F. H. Flagg, has since died; and complainant has not been able to find any board of directors of said company since A. D. 1869. Complainant (par. 18) "is informed and believes that there has been no president or secretary elected by the stockholders or others, and no board of directors, since 1869; that he has failed to get any relief, nor can he find any board of directors to whom to apply for relief since 1869."

Complainant (par. 19) cannot state where the said coupons now are; they have never been sold by the company, and presuming [presumes?] that they are either in the hands of the company or of said trustees; but if they were received by the trustees they were not bought by them, and said trustees had no authority of law to buy, trade, or barter for said coupons with said company; but if any such pretended trading, bartering, buying, swapping, or attempt to transfer the ownership of said coupons ever took place between the said company and the trustees, that the same was void as to complainant. That (par. 20) if said coupons had been destroyed or attempted to be cancelled by either said company or trustees, complainant is entitled to have the same re-established by decree of this court, and thus re-established to stand in lieu of the originals, and to be delivered to complainant on his surrendering said certificates.

The company (par. 21) has never paid one cent of interest or anything on said shares or certificates.

That during (par. 22) 1866, 1867, 1868, and part of 1869 Walter Gwynn, one of the defendants, was a member of

said board of trustees, and at the same time an officer of the said company, having in his hands the lands of said company derived from the State of Florida, and said board had, therefore, knowledge of the transactions of said company by reason of one of the trustees being an officer of said corporation.

That (par. 23) Robert H. Gamble, who was for the year 1866, up to and including the present time, one of the board of directors of said company, was some time in 1868 and up to 1873 comptroller of the State of Florida and one of said trustees, and the trustees had, therefore, notice of the surrender of said coupons by complainant and the issue to him of said pretended shares of preferred stock.

Complainant (par. 24) offers to deliver up to the company said certificates, and alleges he has been anxious and desirous to do so for many years, but "he could not find any one who was authorized or who would receive the same and give him back the said coupons."

There are eleven interrogatories addressed to the company and trustees, and the prayer is, that a decree may be made (1st) requiring the company to deliver to complainant said coupons on complainant surrendering to it or delivering into this court said certificates; (2d) that in case said coupons are in the hands of the trustees or their agents they, the said trustees, may also be ordered to turn them over to complainant; (3d) that in case it shall appear the said coupons have been cancelled, lost, or destroyed by the said company or trustees or by their authority, an order may be made re-establishing the same, they to have the same force and effect as the originals, and to be delivered to complainant; (4th) general relief and subpœna.

Demurrer.

The trustees demurred to the bill on the ground that the "complainant hath not in and by his bill made or stated such a case as doth or ought to entitle him to any such dis-

covery or relief as is thereby sought or prayed for against these defendants." (See pp. 21, 22 of Printed Record.) The company also demurred on the same ground. (Pp. 20, 21.)

Decree.

After argument a decree was rendered dismissing the bill, (p. 24,) and complainant appealed.

Points.

From the foregoing statement of the pleadings, the following facts appear: The appellant—the complainant below—is now and was during the year 1866, and previous thereto, a merchant in the city of New York; he was a friend of the appellee, the Pensacola and Georgia Railroad Company. (which company was incorporated by an act of the Florida Legislature, approved January 8, 1853,) and was so recognized by the company and the business public in New York and Europe; he sold to the said company, prior to the year 1866, railroad iron for the construction of its railroad, for which he took its notes. Subsequently he took from said company 252 of the first-mortgage bonds of said company, in payment of the said notes of the said company, which bonds were issued on the 1st day of January, 1861, under and by virtue of an act of the Legislature of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, and known as the "Internal Improvement Act." The said company having, by reason of the war, become embarrassed, its then president, Edward Houstoun, came, in the year 1866, to the city of New York, to the appellant, to secure his aid in relieving the company of its most pressing debts, the chief of which was the past-due interest on the first-mortgage bonds of the company. The Trustees of the Internal Im-

provement Fund of the State of Florida are authorized by the third section of the Internal Improvement Act, in the event of the failure of any railroad company to provide the interest upon the bonds issued by said company, under the provisions of the act, at the time it falls due, and the sum of one per centum on the entire amount of the bonds so issued as a sinking fund, after the expiration of thirty days from said default, to take possession of the railroad, and all the property of every kind belonging to the company, and advertise the same for sale, at public auction, to the highest bidder, either for cash or additional approved security, as they may think most advantageous for the interest of the internal improvement fund and the bondholders; and the proceeds arising from said sale are to be applied by said trustees to the purchase and cancelling of the outstanding bonds issued by said defaulting company, or incorporated with the sinking fund.

The said president represented to appellant that the only way to save said railroad company from bankruptcy was for the holders of the past-due coupons to surrender them to the company, and receive in exchange therefor preferred stock of the company. He urged and entreated appellant not only to surrender the past-due coupons then owned and held by him, but also to use his influence with his friends in Europe and America, who were holders of like past-due coupons, to surrender their coupons to the company, and receive in exchange therefor shares of preferred stock of said company. Appellant consented to this plan of adjusting the financial difficulties of the company by which it was then embarrassed, and surrendered his coupons, and also procured some of his friends in Europe to surrender theirs, in exchange for which certificates of preferred stock of the company were issued by it to him and them.

It is charged in the bill that the said president repeatedly declared to appellant that the proposed exchange of said coupons for preferred stock was the only way to save the

railroad company from bankruptcy, and that the preferred stock would be valuable, and that the company would guarantee the interest thereon.

The fraud charged in the bill (par. 12) is, that the said company had no lawful right to issue any shares of preferred stock, and that the issuance of such preferred stock was in violation of the charter of said company and of the laws of Florida, and a gross fraud upon appellant in law and in fact, and done for the purpose of deceiving and defrauding appellant out of his just rights and property.

I.

1. A railway company, where the capital is not limited in the charter, may from time to time issue new shares, and even give them a preference, probably, as a mode of borrowing money, where it has the power to borrow money on bond and mortgage, as preferred stock is only a form of mortgage. (2 Redf. Law of Railways, 598; Bates *v.* Androscoggin & Kennebec Railway, 49 Maine, 491; Evansville, &c., Railway *v.* Evansville, 15 Ind., 395.)

Section 2 of the charter of the appellee railway company is in these words;

"SEC. 2. *Be it further enacted*, That the capital stock of said company may be one million five hundred thousand dollars, with the privilege of increasing it, if necessary, to three million five hundred thousand dollars, divided into such number of shares as a majority of the board of directors may determine." (Acts 1852–'53, p. 44.)

Section 4 provides that the company "may sue and be sued, make contracts, pass by-laws, and do all lawful acts properly incident to a corporation, or necessary and proper for the transaction of the business for which it is incorporated."

The latter clause of section 6 of the charter is as follows:

"And said directors are further empowered to pass all

by-laws which they may deem necessary and proper for exercising all the powers vested in this company for carrying into effect the object of this act: *Provided only*, That such by-laws shall not be contrary to the law of this State or of the United States; and said directors, or a majority of them, are empowered to borrow money to carry into effect the object of this act, to issue certificates or other evidences of such loan, and to pledge the property of said company for the payment of the same, with the interest."

It seems plain that these provisions of the charter fully confer upon the company the power to make the transaction complained of here.

And every person dealing with a corporation, or receiving its obligations, is supposed to be cognizant of the provisions of its charter. (Lowry *et al. v.* Inman, 46 N. Y., 125.)

2. But were this not so, excess in the exercise of power by a corporation is to be redressed by the Commonwealth, and not by any and every volunteer who may choose to interfere. (P. & C. R. R. Co. *v.* County of Allegheny, 63 Penn. St., R. 137.)

In the application of the doctrine of *ultra vires*, it is to be borne in mind that it has two phases: one where the public is concerned; one where the question is between the corporate body and the stockholders in it, or between it and its stockholders and third parties dealing with it and through it, with them. When the public is concerned to restrain a corporation within the limit of the power given to it by its charter, an assent by the stockholders to the use of unauthorized power by the corporate body will be of no avail. When it is a question of the right of a stockholder to restrain the corporate body within its express or incidental powers, the stockholder may, in many cases, be denied, on the ground of his express assent or his intelligent though tacit consent to the corporate action. If there be a departure from statutory direction, which is to be considered merely a breach of trust to be restrained by a stockholder, it is

pertinent to consider what has been his conduct in regard thereto. A corporation may do acts which affect the public to its harm, inasmuch as they are *per se* illegal, or are *malum prohibitum*. Then no assent of stockholders can validate them. It may do acts not thus illegal, though there is want of power to do them, which affect only the interest of the stockholders. They may be made good by the assent of stockholders, so that strangers dealing in good faith with the corporation will be protected in a reliance upon those acts. The instance in Bissell *v.* Mich. So., &c., R. R. Co., 22 N. Y., 269, is illustrative. A bank has no authority from the State to engage in benevolent enterprises; and a subscription, though formally made, for a charitable object would be out of its powers; but it would not be otherwise an illegal act; yet if every stockholder did expressly assent to such an application of the corporate funds, though it would still be in one sense *ultra vires*, no wrong would be done, no public interest harmed; and no stockholder could object or claim that there was an infringement of his rights, and have redress or protection. Such an act, though beyond the power given by the charter, unless expressly prohibited, if confirmed by the stockholders could not be avoided by any of them to the harm of third persons. This arises from the principle that the trust for stockholders is not of a public nature. (Kent *v.* Quicksilver Mining Co., 78 N. Y., 185–6.)

A regulation looking to the internal management of the affairs of a corporation, such as fixing the rights of stockholders among each other, is a matter in which the public, as such, has no interest. (Hazlehurst *et al. v.* The Sav., &c., R. R. *et al.*, 43 Ga., 56.)

The case of Miller *v.* Pitts. and Conn. Railroad Co., 4 Wright, 239, cited by the learned counsel for appellant in support of the proposition that an agreement to pay interest is a fraud on other shareholders and creditors, and therefore void, does not sustain it. The court, after character-

izing such a practice as "foolish" and "absurd," say: "Still, where such a condition is inserted in the contract, it must be judicially administered," and that had the subscriber "paid his stock, he would have been entitled to receive interest."

3. Neither the company nor any of its stockholders are complaining of this agreement. The appellant ought not to be permitted to avoid the agreement entered into by him on the ground that he obtained a stipulation in his favor which he now claims the railroad company was not authorized to make. (Evansville, &c., R. R. Co. *v.* Evansville, 15 Ind., 415; Kent *v.* Quicksilver Mining Co., *supra.*)

4. An unconscionable arrangement will not be disturbed where there has been a ratification of it, with knowledge of all its bearings, after time has been had for consideration. (Kent *v.* Quicksilver Mining Co., *supra.*)

5. The presumption is that the transaction was made in pursuance of a by-law or resolution of the company; and such a by-law, when adopted, if not in contravention of the charter, becomes as much the law of the corporation as if it had been a part of the charter. (Kent *v.* Quicksilver Mining Co., *supra.*)

The capital stock of the appellee company was fixed by its charter at one million five hundred thousand dollars, with the privilege of increasing it if necessary to three million five hundred thousand dollars, divided into such number of shares as a majority of the board of directors might determine. There is no allegation in the bill that the preferred stock issued to the appellant and his friends was in excess of the amount authorized by the charter, and, in the absence of such an allegation, the presumption is that the act of the company was within the scope of its authority.

II.

The statute of limitations of Florida provides that "actions, other than those for the recovery of real property, can only be commenced as follows: * * * within three years; * * * fourth, an action for relief on the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud." (Acts 1872, ch. 1869, sec. 10, p. 22.)

There is nothing in the bill showing that the fraud complained of was not discovered immediately. But the pleader puts the failure to bring the suit within the time prescribed by the statute upon the ground that the president of said company shortly afterwards moved out of the State of Florida, and has since died; that the secretary of the company turned over all the books and papers to some parties to the complainant unknown, and has since died; and that complainant has not been able to find any board of directors of said company since 1869. The learned counsel in his brief says: "We say this takes the case out of the statute of limitations."

The best answer to this excuse is, that the complainant, without showing any change in the condition of the company, files his complaint herein and immediately gets service upon the company.

III.

The Trustees of the Internal Improvement Fund are charged with committing a fraud upon the appellant, in that they, in March, 1869, took possession of the railroad and advertised the same for cash, and then sold it for part cash and part credit, without any authority of law therefor.

The sum for which the property was sold is one million two hundred and twenty thousand dollars. There is no

allegation that this was an inadequate price, nor is there any allegation that that portion of the purchase-money for which credit was given has not been paid. The learned counsel, however, in his brief, p. 14, says the records of this court show that there is $472,000 of the purchase-money yet unpaid. I respectfully refer the court to the case of State of Florida *v.* Anderson *et al.*, 91 U. S. R., 667, for a full history of the transactions with respect to the appellee railroad company and of the action of the trustees in relation thereto.

The State of Florida having, by an act of the Legislature, approved June 24, 1869, (Acts 1869, pp. 40, 41, and 42,) confirmed the sale made by the trustees, the court will not be disposed, I think, to disturb it at this late day at the instance of the appellant, who, as shown by his bill, was "a good friend of the corporation," (the appellee company,) "advancing its interests in all mercantile, legitimate means, and was so recognized by the business public in New York and Europe," and who must consequently necessarily have been fully acquainted with its business affairs, and therefore not in a condition to be imposed upon by its president.

The decree of the court below sustaining the demurrers should be affirmed.

C. W. JONES,
Of Counsel.

Filed.
4 1/2
Jan 3. 1881

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~463.~~ 184

THE TOWNSHIP OF LINCOLN, PLAINTIFF IN ERROR,

vs.

THE CAMBRIA IRON COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED SEPTEMBER 3, 1878.

69

H. Y. Lazear.

Gas Store.

No. 79,989. Patented Jul. 14, 1868.

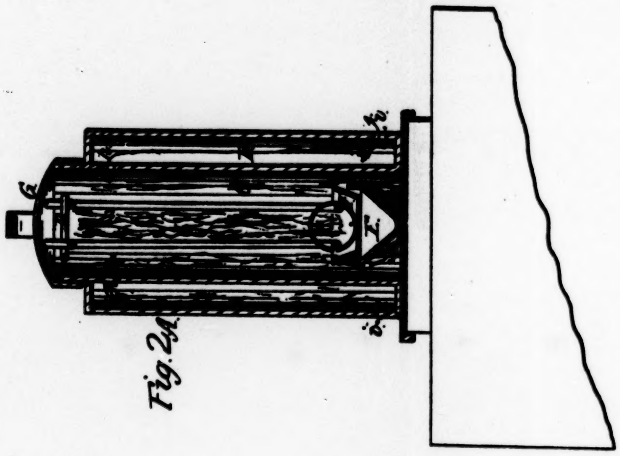


Fig. 2.

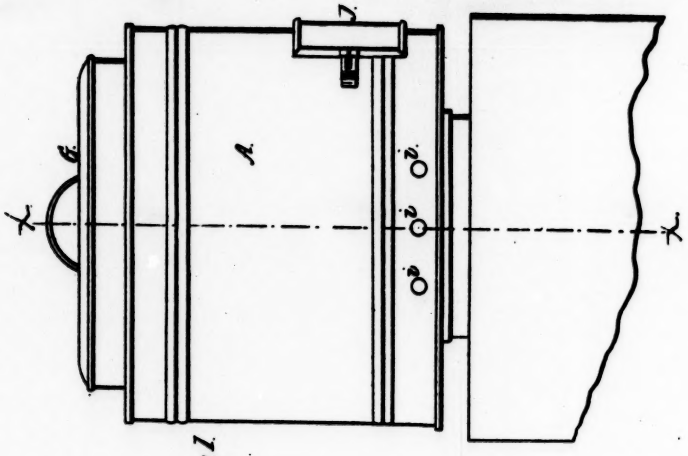


Fig. 1.

Witnesses:

Wm. A. Morgan

G. de Leaston

Inventor:

H. Y. Lazear

per Munn & Co

Attorneys

74

W. F. Shaw.

Gas Stove.

No. 28,781. Patented Jun. 19, 1860.

Fig 4.

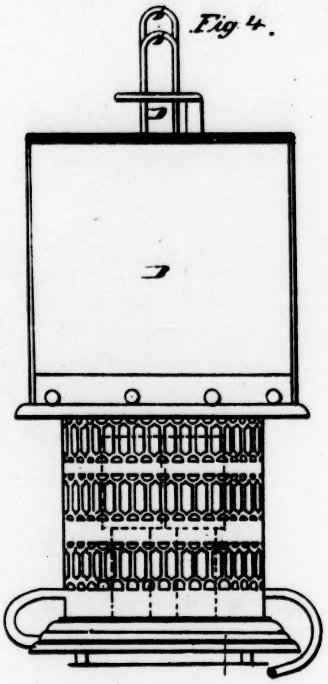


Fig 1

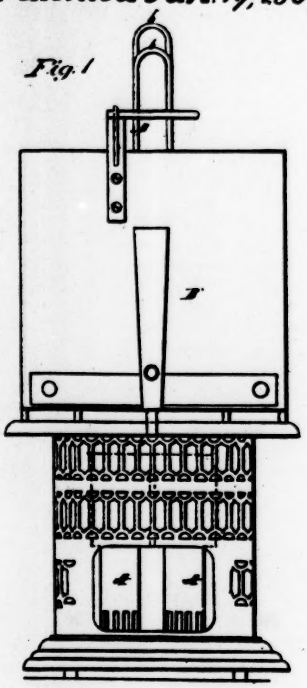


Fig 3

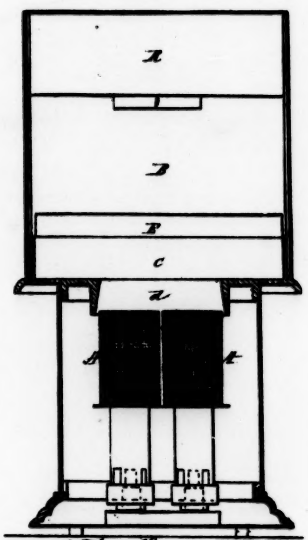
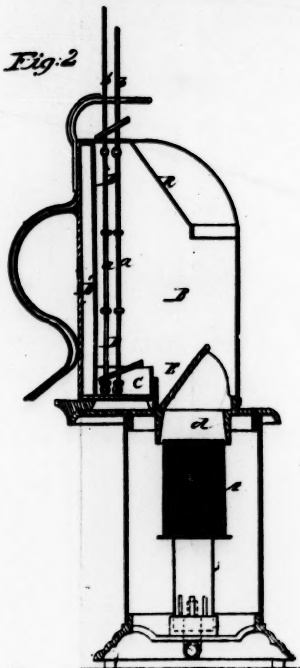


Fig 2



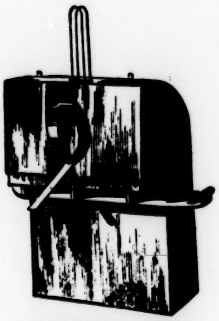
Witnesses Francis Laing. William Shirley

Inventor Wm F Shaw

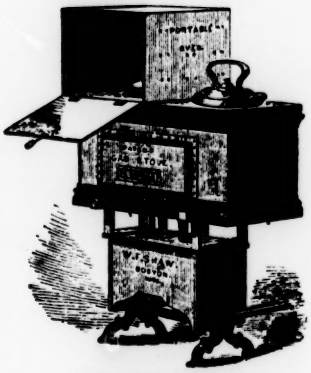
DEFENDANT'S
EXHIBIT D.

DEFENDANT'S
EXHIBIT E.

DEFENDANT'S
EXHIBIT F.

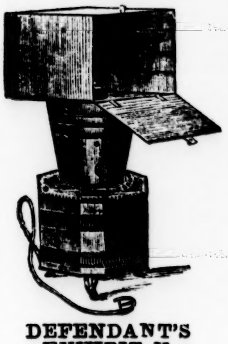


DEFENDANT'S
EXHIBIT G.



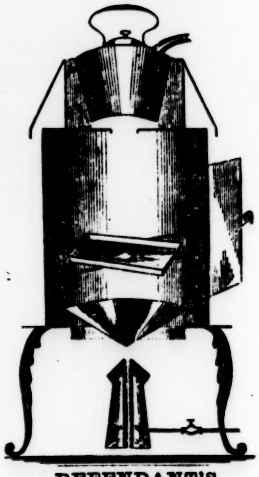
DEFENDANT'S
EXHIBIT H.

DEFENDANT'S
EXHIBIT I.



DEFENDANT'S
EXHIBIT K.

DEFENDANT'S
EXHIBIT L.



DEFENDANT'S
EXHIBIT M

77

D. C. Teller.

Gridiron.

No 66,911. Patented Jul. 16, 1867.

Fig 1.

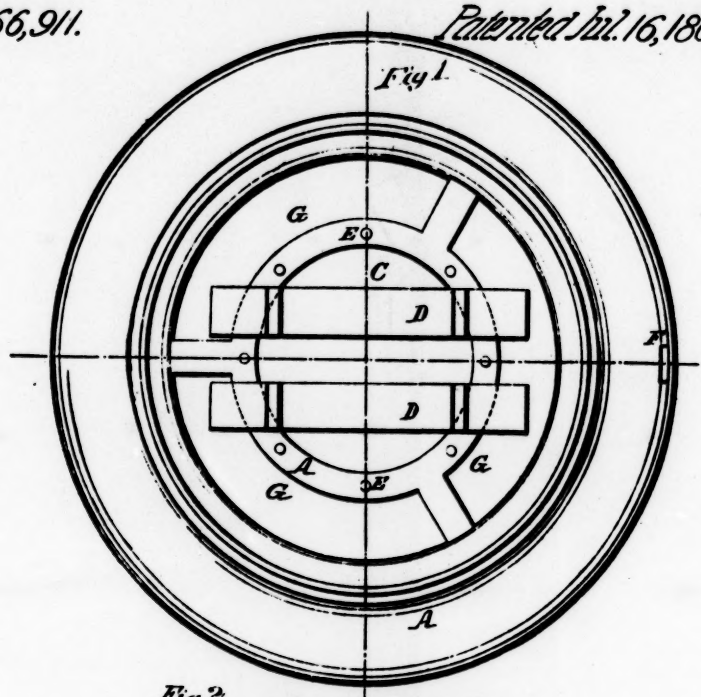
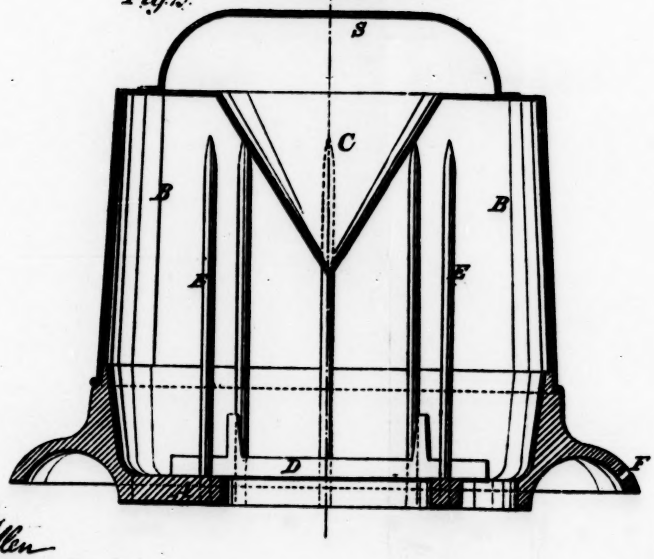
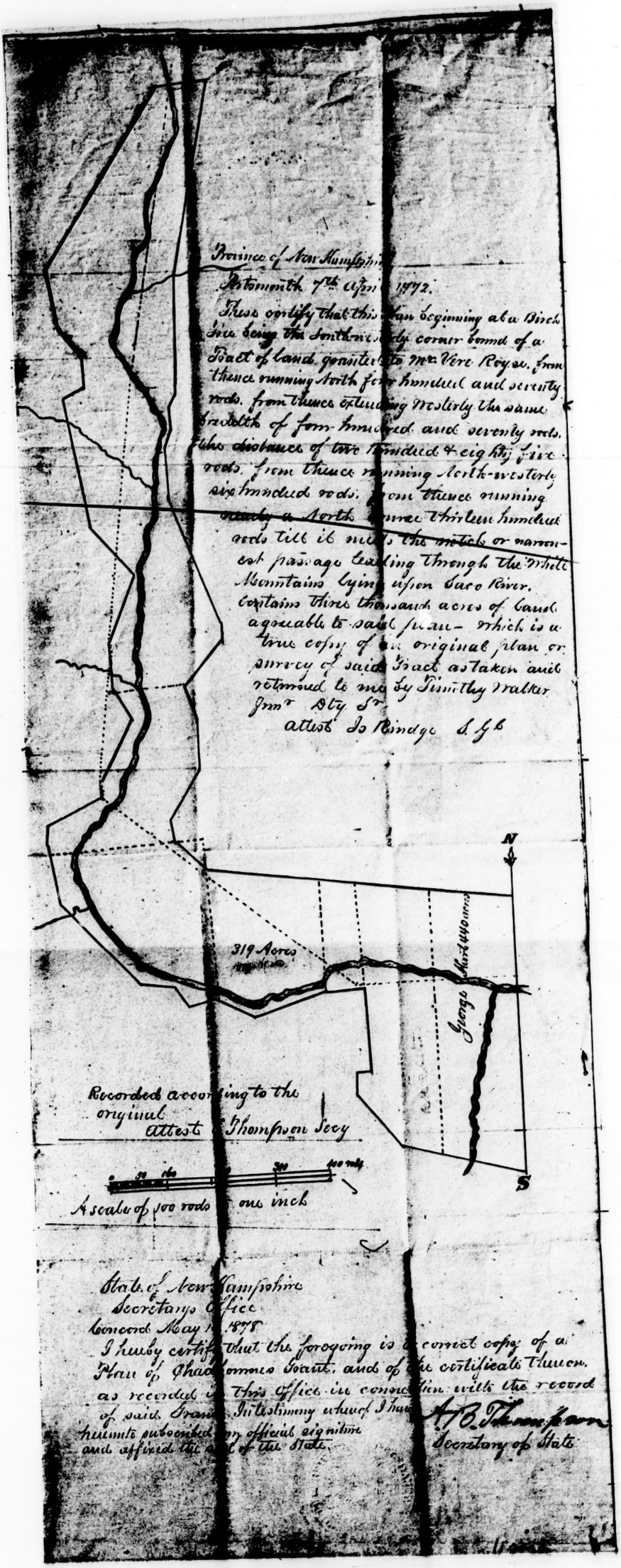


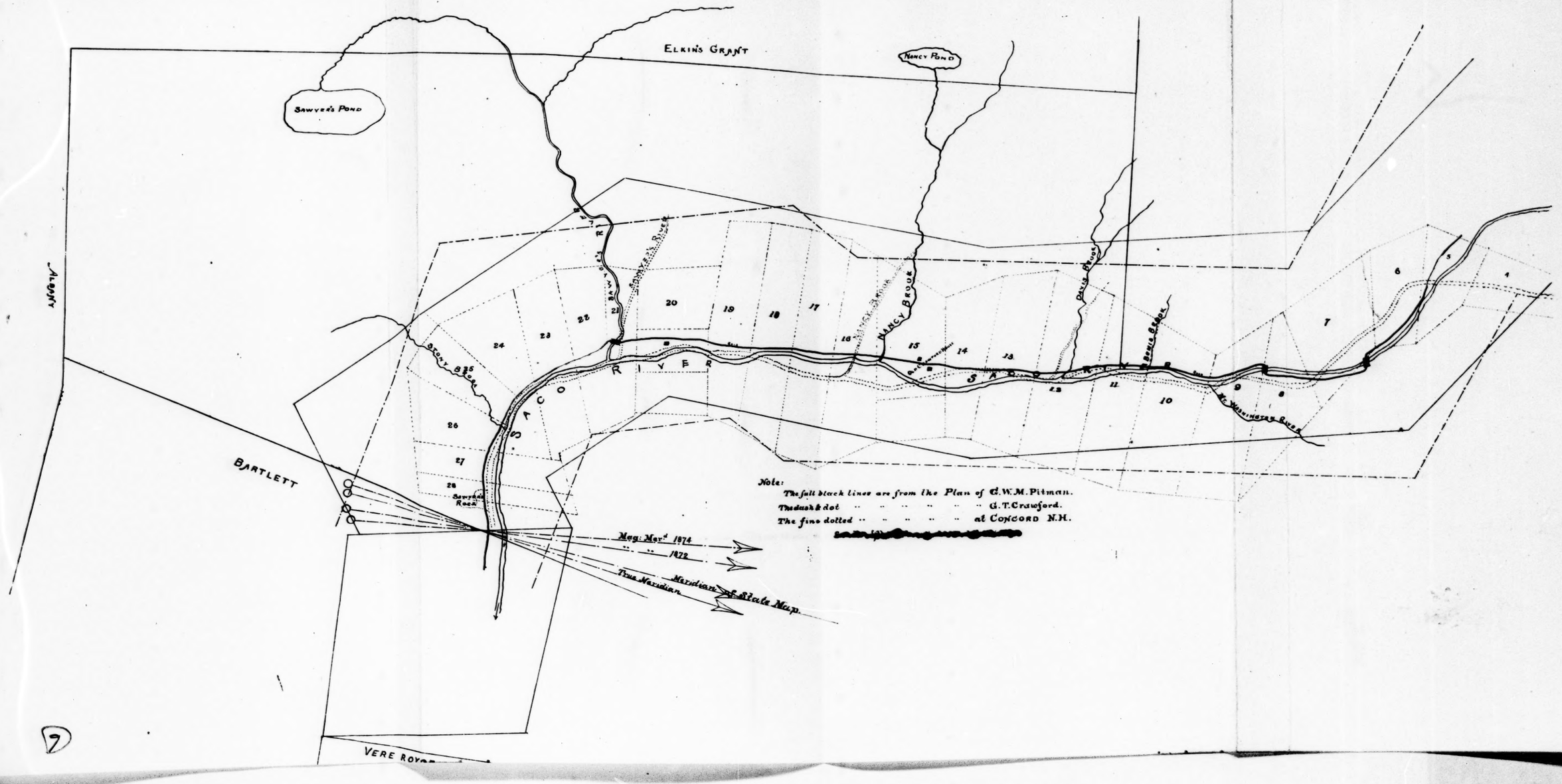
Fig 2.



Witnesses
E. B. Allen
Geo. M. Sibley

Inventor:
D. C. Teller


Province of New Hampshire
Portsmouth 7th April 1772.
These certify that this Plan beginning at a Birch tree being the Southwesterly corner bound of a Tract of land granted to Mr. Vere Royse. from thence running North four hundred and seventy rods. from thence extending Westerly the same breadth of four hundred and seventy rods. the distance of two hundred & eighty five rods. from thence running North-westerly six hundred rods. from thence running Northerly & North Easterly thirteen hundred rods till it meets the mouth or nearest passage leading through the White Mountains lying upon Saco River. Contains three thousand acres of land agreable to said grant — which is a true copy of the original plan or survey of said Tract as taken and returned to me by Timothy Walker Junr Esqr
attest Jo Pindge Secy
N
319 Acres
George Hartwell
S
Recorded according to the original
attest Thompson Secy
A scale of 100 rods to one inch
State of New Hampshire
Secretarys Office
Concord May 1st 1878
I hereby certify that the foregoing is a correct copy of a Plan of Chadbourne Tract, and of the certificate thereon, as recorded in this office in connection with the record of said Grant. In testimony whereof I have hereunto subscribed my official signature and affixed the seal of the State.
A B Thompson
Secretary of State


ELKINS GRANT
SAWYER'S POND
NANCY POND
ALBANY
BARTLETT
SAWYER RIVER
STONY BROOK
NANCY BROOK
DAVIS BROOK
BEALS BROOK
MT. WASHINGTON RIVER
SACO RIVER
SAWYER'S RIVER ROAD
VERE ROYD
Mag: Var.d 1874
" " 1872
True Meridian
Meridian of State Map.
Note:
The full black lines are from the Plan of C.W.M. Pitman.
Thedash & dot " " " " " G.T. Crawford.
The fine dotted " " " " " at CONCORD N.H.

7

This Plan is laid down by scale of 10 Chains to one Inch

Township on North Boston

This original Plan was taken by
Nath[l] Moriel surveyor
1794 to 1795

Lot No 36 130 acres
Lot No 35 130 acres
Lot No 34 130 acres
Lot No 33 130 acres
Lot No 32 120 acres
Lot No 31 99 acres
Lot No 30 134 acres
Lot No 29 178 acres
Lot No 28 150 acres
Lot No 27 115 acres
Lot No 26 90 acres
Lot No 25 150 acres
Lot No 24 150 acres
Lot No 23 150 acres
Lot No 22 150 acres
Lot No 21 150 acres
Lot No 20 178 acres
Lot No 19 178 acres
Lot No 18 131 acres
Lot No 17 145 acres
Lot No 16 150 acres
Lot No 15 150 acres
Lot No 14 112 acres
Lot No 13 158 acres
Lot No 12 163 acres
Lot No 11 95 acres
Lot No 10 84 acres
Lot No 9 90 acres
Lot No 8 90 acres
Lot No 7 111 acres
Lot No 6 90 acres
Lot No 5 66 acres
Lot No 4 90 acres
Lot No 3 150 acres
Lot No 2 150 acres
Lot No 1 150 acres

Lot No 35 130 acres
Lot No 34 130 acres
Lot No 33 98 acres
Lot No 32 90 acres
Lot No 31 90 acres
Lot No 30 90 acres
Lot No 29 178 acres
Lot No 28 150 acres
Lot No 27 115 acres
Lot No 26 150 acres
Lot No 25 150 acres
Lot No 24 150 acres
Lot No 23 150 acres
Lot No 22 150 acres
Lot No 21 150 acres
Lot No 20 178 acres
Lot No 19 178 acres
Lot No 18 131 acres
Lot No 17 145 acres
Lot No 16 150 acres
Lot No 15 150 acres
Lot No 14 112 acres
Lot No 13 158 acres
Lot No 12 163 acres
Lot No 11 95 acres
Lot No 10 84 acres
Lot No 9 90 acres
Lot No 8 90 acres
Lot No 7 111 acres
Lot No 6 90 acres
Lot No 5 66 acres
Lot No 4 90 acres
Lot No 3 150 acres
Lot No 2 150 acres
Lot No 1 150 acres

Lot No 36 130 acres
Lot No 35 130 acres
Lot No 34 98 acres
Lot No 33 90